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JS-6

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

AFTCO MFG. CO., INC., a California corporation,	)	Case No. SACV 10-00281 AG (RNBx)
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CONSENT JUDGMENT</b>
ACELERANT, INC., doing business under the fictitious business name of STINGRAY TACKLE COMPANY, a Florida corporation.	)	
	)	
Defendant.	)	
	)	
	)	
	)	

WHEREAS, Plaintiff AFTCO MFG. CO., INC. ("AFTCO") is the owner of a trademark registered on the Principal Register, as evidenced by a certificate of registration for U.S. Trademark No. 1,615,844 ("Trademark Registration No. 1,615,844"), for the design of fishing rod roller guides consisting of the exterior configuration of the upper portion of a fishing rod roller guide, excluding the feet and roller and line attachment points on the frame; and

WHEREAS, AFTCO is the owner of a trademark registered on the Principal

1 Register, as evidenced by a certificate of registration for U.S. Trademark No.  
2 1,643,711 (“Trademark Registration No. 1,643,711”), for the design of fishing rod  
3 roller tip-tops consisting of the exterior configuration of the frame of a fishing rod  
4 roller tip-top, excluding the roller frame rod mount or sleeve and the axis assembly  
5 for the roller; and  
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8 WHEREAS, AFTCO claims and alleges to be the owner of a distinctive trade  
9 dress for its fishing rod roller guide and roller tip-top products, including its swivel  
10 tops, that are the subject of the claims alleged in the Complaint in this action (“the  
11 Complaint”), consisting of the overall shape of its roller guides and its roller tip-tops,  
12 including its swivel tops, as they have heretofore been designed, manufactured,  
13 marketed and sold by AFTCO (“the AFTCO Trade Dress”); and  
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16 WHEREAS, the Complaint filed by AFTCO in this action on or about March  
17 8, 2010 (“the Complaint”) alleges claims against ACELERANT, INC., dba  
18 STINGRAY TACKLE COMPANY (“STINGRAY”) for, among other things,  
19 infringement of Trademark Registration No. 1,615,844, Trademark Registration No.  
20 1,643,711 and the AFTCO Trade Dress by certain products that are circled on  
21 Exhibit 1 attached hereto (the “Accused Products”); and  
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23

24 WHEREAS, STINGRAY denies all wrongdoing in its Answer to the  
25 Complaint filed in the action on or about April 22, 2010 (“the Answer”) but it  
26 voluntarily ceased the sale of the Accused Products in the United States and the  
27 advertising of the Accused Products as of April 15, 2010 and removed all references  
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1 to the Accused Products from its website to AFTCO's satisfaction; and

2 WHEREAS, the Parties wish to resolve this matter to preserve costs and  
3  
4 judicial resources,

5 NOW, THEREFORE, pursuant to the STIPULATION FOR ENTRY OF  
6  
7 CONSENT JUDGMENT between Plaintiff AFTCO and Defendant STINGRAY  
8 (collectively the "Parties"),

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

10 1. This Court has personal jurisdiction over the Parties and the subject  
11  
12 matter of this action for purposes of this action.

13 2. AFTCO is the owner of the entire right, title and interest in and to  
14  
15 Trademark Registration No. 1,615,844, Trademark Registration No. 1,643,711 and  
16 the AFTCO Trade Dress and has the right to sue to obtain relief for infringements  
17 thereof.

18 3. For purposes of this action only, the Court finds that the roller guides  
19  
20 and roller tip-tops, including swivel tops, on the Accused Products, which are circled  
21 on the pages from STINGRAY's website that are attached hereto collectively as  
22 Exhibit 1, infringe Trademark Registration No. 1,615,844, Trademark Registration  
23 No. 1,643,711 and/or the AFTCO Trade Dress.

24 4. STINGRAY, and all of its officers, agents, servants and employees, if  
25  
26 any, and all persons and entities in active concert or participation with STINGRAY  
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28 and/or any of STINGRAY'S officers, agents, servants or employees, if any, who

1 receive actual notice of this CONSENT JUDGMENT by personal service or  
2 otherwise, are hereby restrained and enjoined for the life of Trademark Registration  
3 No. 1,615,844, Trademark Registration No. 1,643,711 and the AFTCO Trade Dress  
4 rights from:  
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6 (i) Selling, shipping, delivering, distributing, or otherwise disposing  
7 of, in the United States, fishing rods that are equipped with the roller guides circled  
8 on Exhibit 1 attached hereto or other roller guides having the distinctive  
9 configuration of Trademark Registration No. 1,615,844, or with roller tip-tops,  
10 including swivel tops, circled on Exhibit 1, or other roller tip-tops, including swivel  
11 tops, having the distinctive configuration of Trademark Registration No. 1,643,711,  
12 or with roller guides or roller tip-tops, including swivel tops, having the shape of the  
13 AFTCO Trade Dress or any other configuration or shape which is substantially  
14 similar thereto or which so resembles Trademark Registration No. 1,615,844,  
15 Trademark Registration No. 1,643,711 and/or the AFTCO Trade Dress as to be  
16 likely to cause confusion, to cause mistake or to deceive; (as used hereinafter in this  
17 Paragraph 4 and in Paragraph 5 herein below, all references to “roller tip-tops” shall  
18 include both roller tip-tops and swivel tops);  
19

20 (ii) Selling, shipping, delivering, distributing, or otherwise  
21 disposing of, in the United States, the roller guide parts circled on Exhibit 1 attached  
22 hereto or other roller guide parts having the distinctive configuration of Trademark  
23 Registration No. 1,615,844, or the roller tip-tops circled on Exhibit 1 or other  
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1 roller tip-top parts having the distinctive configuration of Trademark Registration No.  
2 1,643,711, or roller guide parts or roller tip-tops parts having the shape of the  
3 AFTCO Trade Dress or any other configuration or shape which is substantially  
4 similar thereto or which so resembles Trademark Registration No. 1,615,844,  
5 Trademark Registration No. 1,643,711 and/or the AFTCO Trade Dress as to be  
6 likely to cause confusion, to cause mistake or to deceive;  
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8  
9 (iii) Importing into the United States fishing rods that are equipped  
10 with the roller guides circled on Exhibit 1 or other roller guides having the  
11 distinctive configuration of Trademark Registration No. 1,615,844, or with the roller  
12 tip-tops circled on Exhibit 1 or other roller tip-tops having the distinctive  
13 configuration of Trademark Registration No. 1,643,711, or with roller guides or  
14 roller tip-tops having the shape of the AFTCO Trade Dress or any other  
15 configuration or shape which is substantially similar thereto or which so resembles  
16 Trademark Registration No. 1,615,844, Trademark Registration No. 1,643,711  
17 and/or the AFTCO Trade Dress as to be likely to cause confusion, to cause mistake  
18 or to deceive;  
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20  
21 (iv) Importing into the United States the roller guide parts circled on  
22 Exhibit 1 or other roller guide part having the distinctive configuration of Trademark  
23 Registration No. 1,615,844, or the roller tip-top parts circled on Exhibit 1 or other  
24 roller tip-tops parts having the distinctive configuration of Trademark Registration  
25 No. 1,643,711, or roller guide parts or roller tip-top parts having the shape of the  
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1 AFTCO Trade Dress or any other configuration or shape which is substantially  
2 similar thereto or which so resembles Trademark Registration No. 1,615,844,  
3 Trademark Registration No. 1,643,711 and/or the AFTCO Trade Dress as to be  
4 likely to cause confusion, to cause mistake or to deceive;  
5

6 (v) Inducing or abetting others in the United States to sell or pass off  
7 any fishing rods that are equipped with the roller guides circled on Exhibit 1 or other  
8 roller guides having the distinctive configuration of Trademark Registration No.  
9 1,615,844, or with the roller tip-tops circled on Exhibit 1 or other roller tip-tops  
10 having the distinctive configuration of Trademark Registration No. 1,643,711, or  
11 with roller guides or roller tip-tops having the shape of the AFTCO Trade Dress or  
12 any other configuration or shape which is substantially similar thereto or which so  
13 resembles Trademark Registration No. 1,615,844, Trademark Registration No.  
14 1,643,711 and/or the AFTCO Trade Dress as to be likely to cause confusion, to cause  
15 mistake or to deceive;  
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17 (vi) Inducing or abetting others in the United States to sell or pass off  
18 the roller guide parts circled on Exhibit 1 or other roller guides parts having the  
19 distinctive configuration of Trademark Registration No. 1,615,844, or the roller tip-  
20 top parts circled on Exhibit 1 or other roller tip-top parts having the distinctive  
21 configuration of Trademark Registration No. 1,643,711, or roller guide parts or roller  
22 tip-top parts having the shape of the AFTCO Trade Dress or any other configuration  
23 or shape which is substantially similar thereto or which so resembles Trademark  
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1 Registration No. 1,615,844, Trademark Registration No. 1,643,711 and/or the  
2 AFTCO Trade Dress as to be likely to cause confusion, to cause mistake or to  
3 deceive; and  
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5 (vii) Advertising in the United States any fishing rods that are  
6 equipped with the roller guides circled on Exhibit 1 or other roller guides having the  
7 distinctive configuration of Trademark Registration No. 1,615,844, or with the roller  
8 tip-tops circled on Exhibit 1 or other roller tip-tops having the distinctive  
9 configuration of Trademark Registration No. 1,643,711, or with roller guides or  
10 roller tip-tops having the shape of the AFTCO Trade Dress or any other  
11 configuration or shape which is substantially similar thereto or which so resembles  
12 Trademark Registration No. 1,615,844, Trademark Registration No. 1,643,711  
13 and/or the AFTCO Trade Dress as to be likely to cause confusion, to cause mistake  
14 or to deceive;  
15

16 (viii) Advertising in the United States the roller guide parts circled in  
17 Exhibit 1 or any other roller guide parts having the distinctive configuration of  
18 Trademark Registration No. 1,615,844, or the roller tip-top parts circled in Exhibit 1  
19 or any other roller tip-top parts having the distinctive configuration of Trademark  
20 Registration No. 1,643,711, or any roller guide parts or roller tip-top parts having the  
21 shape of the AFTCO Trade Dress or any other configuration or shape which is  
22 substantially similar thereto or which so resembles Trademark Registration No.  
23 1,615,844, Trademark Registration No. 1,643,711 and/or the AFTCO Trade  
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1 Dress as to be likely to cause confusion, to cause mistake or to deceive;

2 (ix) The provisions of this paragraph 4 and of subparagraphs  
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4 (iii) and (iv) of paragraph 5 herein below shall cease to be effective with respect to  
5 Trademark Registration No. 1,615,844 in the event that Trademark Registration No.  
6 1,615,844 is cancelled by court stipulation or judgment or by action of the United  
7  
8 States Patent and Trademark Office and such cancellation is final and not subject to  
9 appeal, or if AFTCO voluntarily abandons such trademark rights; the provisions of  
10 this paragraph 4 and of subparagraphs (iii) and (iv) of paragraph 5 herein below shall  
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12 cease to be effective with respect to Trademark Registration No. 1,643,711 in the  
13 event that Trademark Registration No. 1,643,711 is cancelled by court stipulation  
14 or judgment or by action of the United States Patent and Trademark Office and such  
15 cancellation is final and not subject to appeal, or if AFTCO voluntarily abandons  
16 such trademark rights; and the provisions of this paragraph 4 and of subparagraphs  
17 (iii) and (iv) of paragraph 5 herein below shall cease to be effective with respect to  
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19 the AFTCO Trade Dress in the event that the AFTCO Trade Dress is invalidated by  
20 court stipulation or judgment and such invalidation is final and not subject to appeal,  
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22 or if AFTCO voluntarily abandons such trademark rights. STINGRAY shall not  
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24 bring, either directly or indirectly, any action or proceeding in any court or before the  
25 United States Patent and Trademark Office which seeks the cancellation of  
26 Trademark Registration No. 1,615,844 and/or Trademark Registration No.1,643,711,  
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28 and/or the invalidation of the AFTCO Trade Dress, or any similar relief; and



1           (x) The foregoing provisions of subparagraphs (i) through (ix) of this  
2 Paragraph 4 shall not apply, in whole or in part, to the sale, offering for sale,  
3 advertising, shipping, delivering, distributing, importing, exporting, or otherwise  
4 disposing of: (a) any genuine AFTCO roller guides or roller tip-tops or to  
5 any other AFTCO products or parts that are sold, offered for sale, advertised,  
6 delivered, distributed, imported, exported or otherwise used by STINGRAY or its  
7 agents or assigns, separately or as part of any fishing tackle, fishing rod or any other  
8 item; (b) other roller guides or roller tip-tops which are of a substantially  
9 different design and appearance than Trademark Registration No.1,615,844,  
10 Trademark No. 1, 643,711 and/or AFTCO's Trade Dress such that they do not so  
11 resemble Trademark Registration No. 1,615,844, Trademark Registration  
12 No. 1, 643,711 and/or AFTCO's Trade Dress as to be likely to cause confusion, to  
13 cause mistake or to deceive; and (c) the roller guides or roller tip-tops which are sold  
14 or made by PacBay as of the date of entry of this CONSENT JUDGMENT.  
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16           The provisions of this Paragraph 4 shall be effective as of April 15, 2010, but  
17 shall not apply to any person or entity other than STINGRAY or any of its officers,  
18 agents, servants and employees solely because they purchased from STINGRAY any  
19 of the Accused Products or any other products which violate the provisions of this  
20 Paragraph 4 prior to April 15, 2010 and then resold such products. The foregoing  
21 clause shall not be construed to preclude AFTCO from seeking appropriate relief,  
22 including, but not limited to injunctive relief, concerning the resale of such products,  
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1 against any person or entity that purchased such products from STINGRAY, or from  
2 any other person or entity that purchased such products from STINGRAY, either  
3 prior to or after April 15, 2010.  
4

5 5. STINGRAY shall, within ten (10) days of entry of this CONSENT  
6 JUDGMENT:  
7

8 (i) Remove all roller guides and roller tip-tops circled on  
9 Exhibit 1 attached hereto from all fishing rods that are in its inventory and either  
10 deliver them to AFTCO for disposition or destroy them and provide proof of their  
11 destruction satisfactory to AFTCO;  
12

13 (ii) Deliver all roller guide parts and roller tip-top parts circled on  
14 Exhibit 1 attached hereto that are in its inventory and either deliver them to AFTCO  
15 for disposition or destroy them and provide proof of their destruction satisfactory to  
16 AFTCO; provided, however, that STINGRAY may retain up to four (4) of each  
17 of the Accused Products for the sole purpose of warranty replacement of Accused  
18 Products previously sold by STINGRAY for which it receives warranty claims;  
19

20 (iii) Delete or disable all pages from its website which display the  
21 roller guides and roller tip tops that are circled on Exhibit 1 attached hereto; and  
22

23 (iv) Discontinue all other advertising of fishing rods that are  
24 equipped with the roller guides and roller tip-tops that are circled on Exhibit 1  
25 attached hereto.  
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28 6. No damages are awarded and each party shall bear their own attorneys'

1 fees and costs and related expenses incurred by them in connection with this action,  
2 except that the prevailing party shall be entitled to recover their attorney's fees and  
3 costs incurred in connection with any motion or proceeding for enforcement of this  
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5 CONSENT JUDGMENT.

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7 7. This Judgment shall be binding upon and shall inure to the benefit of the  
8 Parties and their respective heirs, representatives, successors and assigns.

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10 8. The Court shall retain jurisdiction over the Parties and their respective  
11 heirs, representatives, successors and assigns for the purpose of enforcement of this  
12 CONSENT JUDGMENT.

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14 9. This CONSENT JUDGMENT shall be construed under and governed  
15 by the laws of the State of California and the laws of the United States.

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17 10. If any provision of this CONSENT JUDGMENT is held by the Court to  
18 be invalid, then such provision shall be automatically reformed by the Court to the  
19 minimum extent necessary to conform to the requirements for validity declared by  
20 the Court and, as so reformed, shall be deemed a provision of this CONSENT  
21 JUDGMENT as though originally included herein. In the event that a provision is  
22 invalidated that is of such a nature that it cannot be reformed, the provision shall be  
23 deemed deleted from this CONSENT JUDGMENT as though such provision had  
24 never been included herein. In either case, the remaining provisions of this  
25 CONSENT JUDGMENT shall continue in effect.  
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1           11.    The Parties waive all rights to appeal or otherwise collaterally attack  
2 this CONSENT JUDGMENT.  
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5 Dated: June 28, 2010

A handwritten signature in black ink, appearing to read "Andrew J. Guilford", written over a horizontal line.

Andrew J. Guilford, Judge  
United States District Court